New Hampshire Board of Medicine

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NEWSLETTER

News Editor: Penny Taylor, Administrator

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BOARD NEWS:

At the December 3, 2008 meeting, the Board elected officers for the coming year. James G. Sise, M.D. of Keene was re-elected as President and Amy Feitelson, M.D. of Portsmouth was re-elected as Vice President and Chair of the Medical Review Subcommittee (MRSC).

The Board would like to welcome the following new members: Mark Sullivan, P.A. replacing Kevin R. Costin, P.A. Mr. Sullivan is a physician assistant practicing at Appledore Medical Group in Portsmouth. Daniel Morrissey, O.P. from North Hampton who is our newest public member. Louis E. Rosenthall, M.D. replacing Catherine Pipas, M.D. Dr. Rosenthall is board certified in family practice and practices at Dartmouth Hitchcock Clinic in Concord.

The Board would like to welcome the following new members to the Medical Review Subcommittee: Bruce J. Friedman, M.D., replacing Robert Cervenka, M.D. Dr. Friedman is a board certified cardiologist practicing at Dartmouth-Hitchcock Medical Center in Lebanon. Dr. Friedman served 12 years on the Board and then began his term on the Medical Review Subcommittee in February, 2008. Mark H. Selesnick, M.D. replacing Robert Feder, M.D. Dr. Selesnick is board certified in family practice and practices at Pittsfield Medical Center in Pittsfield.

The Board announces the appointment of Lee N. Steckowych, M.D. to the emergency management study commission established by SB 512 of the 2008 Legislative Session. Dr. Steckowych has been licensed in New Hampshire since February 3, 1993 and has agreed to serve in this capacity.

Pursuant to RSA 328-E:16, I(c), the Board is charged with appointing a New Hampshire licensed physician to serve on the Council on Doctors of Naturopathic Medicine Formulary ("Council"). If you are interested in serving on the Council, please write directly to the Board of Medicine requesting appointment. For additional information regarding this appointment and the meeting schedule, please contact Leon Hecht, III, ND at (603) 427-6800.

Medicaid Requirement for Tamper Resistant Prescription Pads

The Board would like to notify all physicians and physician assistants of important information regarding compliance with federally mandated Medicaid Tamper Resistant Requirements. As of October 1, 2008, all fee-for-service Medicaid prescriptions that are either handwritten or printed by a computer must contain at least one feature from each of the three categories of tamper resistance:

1. **Copy Resistance:** to prevent unauthorized copying of a completed or blank prescription;

2. **Erasure/Modification Resistance:** to prevent the erasure or modification of information written on the prescription by the prescriber; and

3. **Counterfeit Resistance:** to prevent the use of counterfeit prescription forms.

Below is a summary of features in compliance with the Center for Medicare and Medicaid Services ("CMS") Guidelines and acceptable to the State of New Hampshire Medicaid Program:

Category 1 – Copy Resistance: One or more industry recognized features designed to prevent unauthorized copying of a completed or blank prescription form.	
Feature	**Description**
"Void," "Illegal," or "Copy" pantograph with or without Reverse "Rx"	The word "Void," "Illegal," or "Copy" appears when the prescription is photocopied. The pantograph should be configured so as not to obscure the security feature description contained on the prescription, the patient and prescriber demographics, or the medication and directions. Some pantographs can be problematic because when the prescription is copied, the resulting "void" or other wording that appears makes the underlying prescription difficult to read. This type of pantograph should be avoided. We suggest that you ask your pad vendor about hollow "VOID" pantograph lettering which is less likely to obscure the prescription information. The Reverse Rx disappears when copied at a light setting – thus making the pantograph more effective in copy resistance. The pantograph may be used with a reverse Rx, but reverse Rx is not effective as a feature by itself.
Micro printing – To be effective, this feature must be printed in 0.5 font or less making it illegible to the pharmacist when copied	Very small font which is legible (readable) when viewed at 5x magnification or greater, and illegible when copied.
Thermochromic ink	Ink changes color with temperature change.
Coin-reactive ink	Ink changes color when rubbed by a coin.
Watermarking Security back print (artificial watermark) Digital watermarks Watermarking on special paper	Printed on the back of prescription form. The most popular wording for the security back print is "Security Prescription" or the security back print can include the states name. Can only be seen when viewed at an angle. Weak digital watermarks cannot be read if copied and strong digital watermarks provide digital rights management/"proof" of origin when copied. Special paper contains a watermark that can be seen when backlit.

Category 2 – Erasure / Modification Resistance: One or more industry-recognized features designed to prevent the erasure or modification of information written / printed on the prescription by the prescriber.	
Features to Prevent Erasure	**Description**
An erasure revealing background (erasure resistance)	Background that consists of a solid color or consistent pattern that has been printed onto the paper. This will inhibit a forger from physically erasing written or printed information on a prescription form. If someone tries to erase, the consistent background color will look altered and show the color of the underlying paper.
Toner Receptor Coating / Toner Lock or Color Lock paper (erasure resistance for computer generated prescriptions printed with a laser printer) OR Chemically reactive paper (erasure resistance for hand written prescriptions)	Special printer paper that establishes a strong bond between laser-printed text and paper, making erasure obvious. Note – this is NOT necessary for inkjet printers – as the ink from inkjet printers is absorbed into normal "bond" paper. If exposed to chemical solvents, oxidants, acids, or alkalis that can be used to alter the prescription, the chemically reactive paper will react and leave a mark visible to the pharmacist.
Features to Prevent Modification	**Description**
Quantity check off boxes and refill indicator (circle or check number of refills or "NR)	In addition to the written quantity on the prescription, quantities are indicated in ranges. It is recommended that ranges be 25's with the highest being "151 and over". The range box corresponding to the quantity prescribed MUST be checked for the prescription to be valid. The refill indicator indicates the number of refills on the prescription. Refill numbers must be used to be a valid prescription.
Pre-printed language on prescription paper Example: "Rx is void if more than XXX Rx's on paper"	Reduces ability to add medications to the prescription. Line must be completed for this feature to be valid. Computer printer paper can accommodate this feature by printing, "This space intentionally left blank" in an empty space or quadrant.
Quantity and Refill Border and Fill (this is the recommended for computer generated prescriptions)	Quantities and refill # are surrounded by special characters such as an asterisks to prevent modification, e.g. QTY **50** Value may also be expressed as text, e.g. (FIFTY), (optional).

**Please note that while ONLY one feature from this Category 2 is required, it is strongly recommended that one feature of erasure resistance and one feature of modification resistance be used. Inkjet printed prescriptions are de-facto erasure resistant based on the characteristics of inkjet ink.

Category 3 – Counterfeit Resistance: One or more industry-recognized feature designed to prevent the use of counterfeit prescription forms.	
Feature	**Description**
Security features and descriptions listed on prescriptions – this feature is strongly recommended on all prescriptions	Complete list of the security features on the prescription paper for compliance purposes. This is strongly recommended to aid pharmacists in identification of features implemented on prescription.
Thermochromic ink	Ink changes color with temperature change.
Encoding techniques (bar codes)	Bar codes on prescription. Serial number or Batch number is encoded in a bar code.
Security Thread	Metal or plastic security threads embedded in paper as used in currency.

Performance Audit of April 2008

The Board of Medicine progress report regarding the performance audit, dated September 10, 2008, can be found on the Board's website at **http://www.nh.gov/medicine** under "Quick Links."

The following is a synopsis of what the Board has been doing since the audit report came out in April, 2008:

Legislative hearings were held by the Executive Departments and Administration Committee (ED&A). Members of the Board of Medicine testified at each of the seven hearings, reviewing the 34 observations brought by the Auditors. The Board has recommended to the legislators multiple changes in the RSA's.

The proposed changes are important to review. Please examine the RSA Laws that are presented here as each has proposed changes that may be significant for your practice. Each of the paragraphs has part of the RSA 329 in italics, and a short synopsis in plain letters. **These are only proposed changes and are not yet final law.** The final changes to RSA 329 are subject to legislative revision and final action.

329:1 Purpose *The practice of medicine is a privilege granted by the people acting through their elected representatives. It is not a natural right of individuals. In the interests of public health, safety and welfare, and to protect the public from the unprofessional, improper, incompetent, unlawful fraudulent and /or deceptive practice of medicine, it is necessary to provide laws and regulations to govern the granting and subsequent use of the privilege to practice medicine. The primary responsibility and obligation of the state medical board is to protect the public.*

329:13-b, V(a) . **Professionals' Health Program.** *The Board may contract with other organizations to operate the professionals' heath program for physicians and physician assistants who are impaired or potentially impaired because of mental or physical illness including substance abuse or disruptive behavior.*

Disruptive behavior will be deemed similar to impairment, physical or mental, and including substance abuse. Such behavior will result in involvement with the Professional's Health Program, currently run by Dr. Sally Garhart.

329:16-f, II. **Licensee Notice Requirements.** *All licensees shall provide the board with a copy of any notice of complaint, action for medical injury, or claim received from or disciplinary action taken in a jurisdiction outside of New Hampshire within 30 days of receipt of such notice or action.*

The actions include disciplinary case or claim, disruptive behavior or adverse proceedings. Any of these actions outside of NH jurisdiction (outside of the state) will require the licensee to send a copy of the notice of complaint within 30 days after the notice.

329:17, IV. Disciplinary Action: Remedial Proceedings.
Every facility administrator, or designee, for any licensed hospital, health clinic, ambulatory surgical center, or other health care facility within the state shall report to the board and disciplinary or adverse action, within 30 days after such action is taken, including situations in which allegations of misconduct are settled by voluntary resignation without adverse action, against a person licensed by the board. Disciplinary or adverse action shall include the requirement that a licensee undergo counseling or be subject to any policy with regard to disruptive behavior.

This is similar to 329:16-f, II, with disciplinary action from various facilities within the jurisdiction of NH. Again, the provider is required to give a copy of the disciplinary notice to the Board within the 30 days from the action taken.

329:18, IX. Investigations.
Any health care facility systems deficiencies or concerns identified in the course of an investigation shall be communicated by the board to the administrator of the facility and to the bureau of health facilities administration. This paragraph shall apply only to health care facilities that are licensed under RSA 151.

The Board has recently noted systems problems due to the facility itself or providers' procedures over periods of time. The cause of the systems is then investigated and, if necessary, a letter is sent to the Bureau of Health Facilities, as well as the facility's administrator. Physician complaints of such systems deficiencies can be sent to the Board where investigation may be taken and a letter sent to the Bureau of Health Facilities, and the facility.

329:24, I and II. Unlawful Practice.
I. Whoever, not being licensed or otherwise authorized according to the laws of this state, shall advertise oneself as practicing medicine, or shall practice medicine, according to the meaning of RSA 329, or in any way hold oneself out as qualified so to do, or call oneself a "physician", or whoever does any such acts after receiving notice that such person's license has been revoked, is engaged in unlawful practice.

II. A person who engages in unlawful practice shall be guilty of a misdemeanor for the first offense by an individual or entity; and for any subsequent offense the person shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Penalty for unlawful practice, like practice without a license, can result in: a cease and desist order, administrative fine up to $50,000 or $1,000 for each day the activity continues, or the denial or conditional denial of a license.

PLEASE TAKE NOTE OF THE FOLLOWING NEW LAWS:

329:26 Confidential Communications. *Effective September 5, 2008*
The confidential relations and communications between a physician or surgeon licensed under provisions of this chapter and the patient of such physician or surgeon are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such physician or surgeon shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a physician or surgeon that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising physician or surgeon. This section shall not apply to investigations and hearings conducted by the board of medicine under RSA 329, any other statutorily created health occupational licensing or certifying board conducting licensing, certifying or disciplinary proceedings or hearings conducted pursuant to RSA 135-C:27-54 or RSA 464-A. This section shall also not apply to the release of blood **or urine** samples and the results of laboratory tests for **drugs or** blood alcohol content taken from a person **for purposes of diagnosis and treatment in connection with the incident giving rise to the** investigation for driving a motor vehicle while such person was under the influence of intoxicating liquors or controlled drugs. The use and disclosure of such information shall be limited to the official criminal proceedings. (New sections of this law are in bold print)

329:1-c Physician-Patient *Relationship* *Effective January 1, 2009*
"Physician-patient relationship" means a medical connection between a licensed physician and a patient that includes an in-person exam, a history, a diagnosis, a treatment plan appropriate for the licensee's medical specialty, and documentation of all prescription drugs including name and dosage.
……. Exceptions: Writing admission orders for a newly hospitalized patient: for a patient of another licensee for whom the prescriber is taking call: for a patient examined by a physician assistant, nurse practitioner, or other licensed practitioner: or for medication on a short-term basis for a new patient prior to the patient's first

appointment or where providing limits treatment to a family member in accordance what the AMA Code of medical Ethics.

Providers will need to have a full evaluation of the patient including a face to face meeting for prescriptions, with exceptions noted above.

329:16-g Continuing Medical Education Requirement *Effective August 25, 2008*

As a condition of renewal of license, the Board shall require each licensee to show proof at least at every biennial license renewal that the licensee has completed 100 hours of approved continuing medical education program within the preceding 2 years.

Renewal of license is now every two years and CME, instead of requiring 150 hours every 3 years, is now 100 hours every other year.

PROBATE ADMINISTRATIVE JUDGE SEEKS DOCTORS TO SERVE AS PAID EXPERTS FOR INVOLUNTARY COMMITMENT CASES

The New Hampshire Probate Courts are in need of psychiatrists willing to serve as expert witnesses in cases involving involuntary admission. These cases come up in two general contexts, non emergency involuntary admissions to the New Hampshire State Hospital pursuant to RSA Chapter 135-C and involuntary admissions to an appropriate treatment facility for those found incompetent to stand trial pursuant to RSA Chapter 171-B.

Most cases arise under 135-C in which the court appoints an independent psychiatrist to examine the respondent and issue a written report, providing an opinion as to whether the person "is in such mental condition as a result of mental illness as to create a potentially serious likelihood of danger to himself or to others." Testimony is generally required at a hearing, if the respondent contests the admission.

The cases, which arise under 171-B are not common, and involve defendants who have been deemed incompetent to stand trial by the court handling the underlying criminal case. As with the involuntary commitment cases, the probate judge appoints an expert, who can be a physician, psychiatrist or psychologist with experience in mental retardation, to examine the individual and file a report with the court. In these cases, the standard to be applied is whether the individual suffers from mental retardation as defined in the most current edition of the DSM and whether he or she "has a condition or behavior as a result of which the person poses a potentially serious likelihood of danger to others or a potentially serious threat of engaging in acts which would constitute arson as evidenced by a specific act or actions…" The expert is asked to give an opinion as to whether the individual meets the standard described, whether involuntary admission is necessary and, if so, to recommend an appropriate facility or program. Testimony is most often required in these cases.

In either type of case, the expert's fees are paid by the State of New Hampshire upon billing submitted through the appointing probate court. These cases involve very important liberty issues for the person who is the subject of the petition and the expert's testimony is critical to insure that due process rights are protected.

If you are interested in being added to the list of available experts, please contact Patty Cole at my office – (603) 271-7525 or pcole@courts.state.nh.us We are in need of coverage in all ten counties and I would be pleased to get some more volunteers.

REQUIREMENTS FOR THE NH AUTISM REGISTRY

The NH Autism Registry is operational and the NH Bureau of Developmental Services is asking that you assist them in "spreading the word" about a new mandatory reporting requirement starting in November 2008.

According to RSA 171-A:30, "Physicians, psychologists, and any other licensed or certified health care provider who is qualified by training to make the diagnosis [of autism] and who then makes the diagnosis that a child is affected by ASD [autism spectrum disorder] shall report all NEW cases of this diagnosis to the Department".

Please note that individuals diagnosed before November 1, 2008 should NOT be registered. The NH Autism Registry is for NEWLY diagnosed individuals only.

The Bureau of Developmental Services has developed an on-line reporting mechanism which can be accessed through the Home Page of the NH Bureau of Developmental Services at:
http://www.dhhs.state.nh.us/DHHS/BDS/default.htm.

Pursuant to RSA 329:18, VIII, the Board is required to investigate ALL consumer complaints. A total of _____ consumer complaints, writs from the Courts, malpractice claims and complaints from other sources were received between July 1, 2008 and December 31, 2008. The Board has issued 18 confidential letters of concern, pursuant to RSA 329:17, VII-a, during that time frame. These letters advise the licensee that while there is insufficient evidence to support disciplinary action, the Board believes the physician should modify or eliminate certain practices, and that continuation of the activities which led to the information being submitted to the Board may result in action against the licensee's license. These letters are not released to the public or any other licensing authority, except that the letters may be used as evidence in subsequent disciplinary proceedings by the Board. The remainder of these complaints, writs, malpractice claims and complaints from other sources resulted in “no further action.”

The following final board actions were taken by the Board from July 1, 2008 through December 31, 2008:

Erol Onel, M.D. – License# 12433 – Boston, MA
7/16/08 - The Board of Medicine approved a Settlement Agreement for Erol Onel, M.D. On February 20, 2008, the Board of Registration in Medicine for the Commonwealth of Massachusetts issued a final administrative order regarding the disposition of disciplinary matters relating to reported inappropriate physical contact with patients that was sexual in nature. Accordingly, the New Hampshire Board has taken reciprocal action. Dr. Onel’s license is revoked. Respondent may not reapply for his New Hampshire license for a period of five years, retroactive from February 20, 2008.

Louis Wiederhold III, M.D. – License# 2911 – Francestown, NH
7/16/08 - The Board of Medicine accepted a Voluntary Surrender of License from Louis Wiederhold, M.D. Professional misconduct allegations are pending against Dr. Wiederhold before the Board concerning prescribing practices.

David S. Chase, M.D. – License# 4185 - Shelburne, VT
8/6/08 – David S. Chase entered in an Agreement to abstain from license reapplication during pendency of appeal awaiting the rule of the Vermont Supreme Court.

Michael P. DiPre, M.D. – License #: 10234
10/22/08 - The Board of Medicine approved a Settlement Agreement for Michael P. DiPre, M.D. The Board had received information that Dr. DiPre failed to maintain adequate documentation of treatment; issued prescriptions which were not documented in the record; failed to recognize or appropriately respond to possible drug seeking behavior; failed to adequately monitor a patient's treatment; failed to respond to the Board's investigator in a timely manner; and failed to maintain a contemporaneous record of treatment Dr. Dipre's license to prescribe Schedule II and III narcotics is suspended until further order of the Board; Dr. Dipre must also provide proof of successful completion of the Case Western Reserve School of Medicine Continuing Education Course on Controlled Substance Management; he is assessed an administrative fine in the amount of $3,000.

Robert P. Andrews, M.D. – License #: 7401
11/07/08 – The Board of Medicine approved a Settlement Agreement with Robert P. Andrews, M.D. The Board received information that Dr. Andrews had voluntarily surrendered his license in the State of Maine. This action was based on unprofessional conduct, prescribing practices and medical records documentation issues. Accordingly, the New Hampshire Board has taken reciprocal action. Dr. Andrews is reprimanded. Dr. Andrews must also provide proof of successful completion of the Case Western Reserve School of Medicine Continuing Education Course on Medical Ethics, Boundaries and Professionalism for a total of 17 credits.

- **All Orders are public documents and may be obtained by calling the Board office at (603) 271-1203. There is a fee of $0.25 per page for all Orders.**

ORGANIZATIONAL CHART
FOR PROCESSING COMPLAINTS/SUITS